IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gurmeet Singh & ors. Versus State of Rajasthan.

S.B. Criminal Revision Petition No.435/2006
against the order dated 16-5-2006 passed by
the Additional Sessions Judge, Raisinghnagar,
in Sessions Case No.25/2004.

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Date of Order: June 01, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioners.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

Notice for final disposal is accepted by Mr. JPS Chaudhary, learned Public Prosecutor appearing for the State. With the consent of the learned counsel for the parties, the revision petition is being finally heard and decided at the admission stage.

By the instant criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 16-5-2006 passed by the Additional Sessions Judge, Raisinghnagar, district Sri Ganganagar (for short, "the trial Court" hereinafter) in Sessions Case No.25/2004, whereby the

trial Court dismissed the application filed by the accused-petitioners requesting the trial Court to summon certain witnesses in defence, viz. Head Moharir of G.R.P., Amar Singh, Railway Driver, D.D. Sharma, Railway Guard, Mani Ram, A.S.I., and Bahadar Singh. Hence this criminal revision.

I have heard learned counsel for the parties. Perused the impugned order.

The petitioners earlier filed an application before the trial Court seeking a direction to the prosecution to produce two witnesses, viz. Mani Ram and Bahadar Singh as they were cited in the Calendar of Witnesses produced by the prosecution but were not produced by the prosecution. That application came to be dismissed by the trial Court on 19-4-2006, against which the petitioners filed S.B. Criminal Revision Petition No. 330/2006. While dismissing that revision petition vide order dated 1.1.2006, this Court made it clear that after closing of the prosecution evidence and after statements of petitioners under Section 313 of the Code and if they wish to lead any evidence in defence, it is open for the petitioners to summon the witnesses when entered into defence.

Learned counsel for the petitioners submits that when the petitioners entered into defence, they moved an application before the trial Court requesting therein to summon the witnesses noticed-above.

The trial Court dismissed the application solely on the ground that earlier also, vide order dated 19-4-2006, the trial Court had dismissed such an application filed by the petitioners without noticing the fact that against the order dated 19-4-2006 passed by the trial Court, a revision petition was filed by the petitioners and while dismissing the revision petition by the order dated 1-5-2006, this Court made it open to the petitioners to move before the trial Court to summon the witnesses when entering into defence.

Section 233 of the Code provides that where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. Sub-section (3) of Section 233 of the Code provides that if the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

In the instant case, even before entering into the defence, the petitioners have been requesting the court below to summon two witnesses Mani Ram and Bahadar Singh, who were cited as prosecution witnesses by the prosecution in the

Calendar of Witnesses filed along with the Challan and so far other witnesses Amar Singh and D.D. Sharma, who are sought to be summoned as defence witnesses are concerned, it is stated that they are the employees of Railway and are first-hand witnesses to the alleged occurrence and, therefore, their evidence before the trial Court in defence is essential.. Thus, it cannot be said that summoning these witnesses is for the purpose of vexation or delay or for defeating the ends of justice.

Having regard to the facts and circumstances of the case, in my view, to meet the ends of justice, it is expedient to permit the petitioners to summon the witnesses, viz. Mani Ram, Bahadar Singh, Amar Singh and D.D. Sharma. The process fee as also the expenses for these witnesses shall be borne by the petitioners.

Consequently, the impugned order dated 16-5-2006 passed by the trial Court is set aside and the trial Court is directed to issue process, on filing the process fee by the petitioners, to summon the four witnesses, viz., Mani Ram, Bahadar Singh, Amar Singh and D.D. Sharma. On appearance of these witnesses, the expenses to these witnesses shall be borne by the petitioners.

(H.R. PANWAR), J.

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